

## STAFF REPORT

**TO:** Planning & Economic Development Committee **DATE:** 8/18/15

**FROM:** Alan Glines, Interim Planning Director

**PREPARED BY:** Shannon Tuch, Principal Planner

**SUBJECT:** Required UDO Amendments, 2015

### Summary

The Planning & Urban Design Department regularly examines development standards and proposes amendments to the Unified Development Ordinance (UDO) in order to guide the built environment to fulfill adopted, strategic goals. All local development standards must also be consistent with state and federal laws. Two recent changes, one at the state level and one at the judicial level, are necessitating changes to the UDO. How these changes are satisfied requires policy direction from Council.

### Background

#### Item #1 – Building Design Elements

On June 19, 2015, Session Law 2015-86 went into effect and applies to all zoning ordinances adopted before, on, or after that date. The law added a new subsection to G.S. 160A-381 for cities which restricts the ability for a municipality to regulate “building design elements” for one and two-family dwelling units. The law provides a list of what cannot be regulated and includes:

- Exterior building color
- Type or style of exterior cladding material
- Style or materials of roofs or porches
- Exterior nonstructural architectural ornamentation
- Location or architectural styling of windows and doors, including garage doors
- Location of rooms, and
- Interior layout of rooms

Other basic standards that may continue to be regulated include:

- Mass
- Height
- Orientation

A survey of the UDO has identified several areas where minor-moderate regulation of building design elements for one and two-family dwelling units are included and will need to be amended. With each item, staff has offered a recommendation for the Committee’s consideration.

- 1) ***Duplexes in single family districts as a use-by-right.*** Current standards were designed to provide a higher density option by-right but included design requirements that ensured that these structures reflect the existing single family character in the areas in which they were proposed. This application type has not been popular with fewer than 10 duplexes built under

these standards. Without those controls, the character of these communities could be altered and while infill development is strongly desired, compatibility with the character of the existing community is also of great importance. With the augmentation of allowances for Accessory Dwelling Units, combined the lack of interest in this application type and the potential incompatibility of new duplex development, staff recommends removing the option for a duplex as a use-by-right in single family districts only. An option for a duplex as a Conditional Use Permit will remain and could be considered and allow for addition of design elements that promote compatibility. Additionally, other work on promoting and encouraging infill development in other ways continues to be explored.

- 2) **Cottage Developments.** Currently allowed in higher density residential districts, cottage developments promote small(er), detached cottage homes oriented around a common green and which shares parking infrastructure and other open spaces. The Cottage Development application option has been reasonably successful. Staff recommends simply removing the design standards related to porches, siding materials, and roof pitches in order to remove any unnecessary regulation of a more popular infill tool.
- 3) **Alternative Access Subdivisions.** Also commonly referred to as “4-lot subdivisions”. Originally envisioned as a tool to promote infill, single family development. This tool has been used moderately but has dropped off significantly as the 1500 foot separation requirement between subdivisions has blocked new developments. This, combined with new concerns over larger tracts of land being underdeveloped with substandard infrastructure that adds maintenance burdens to homeowners, staff recommends removing the standards for 4-lot subdivisions altogether and pursue other options to promote infill housing development (i.e. subdivision modifications & adopting new standards for the use of existing, unopened rights of way).
- 4) **Haywood Rd. Form-based Code.** Intended to discourage single-family development the Haywood Rd. FBC retained options for single-family home development but included standards that guided a denser and pedestrian-oriented development pattern. Standards regulating lot coverage, height, build-to lines, etc. may continue to be applied, however standards that regulate window & door coverage, porches/stoops/patios and garage placement must be removed. The districts that allow single-family structures are oriented towards housing options and to remove single family structures may result in limited options for property owners, staff recommends removing the aesthetic standards but retain the single-family home as an option. Separate from this action, and as part of a code update planned for later this year, staff will continue to study whether the single family home option is inconsistent with the purpose and intent of the code and should be removed.
- 5) **Duplexes in the Central Business District.** Staff cannot recall any applications for a duplex in the CBD in the last 10 years but, technically, downtown design requirements would be required for new construction or substantial renovations. While unlikely to see such applications, staff recommends adding an exemption for duplexes in the CBD design and operational standards.

Each of these items will require a wording amendment which may include other beneficial changes that have already been identified.

**Financial Impact/Resources:**

Staff resources will be needed to perform these wording amendments, however, the scale of these amendments can be folded into the Planning & Legal Departments' regular work plans.

**Goal Alignment:**

Changes are necessary to comply with state law.

Item #2 – Sign Code

In June of this year, the federal Supreme Court rendered a decision (Reed v. Town of Gilbert) that made clear that it was unconstitutional to regulate signs based on content. The impact of this decision is significant and limits a municipality's ability to regulate signs based on the message that is included on the sign. In its simplest form this means that if one type of sign is allowed, under certain conditions, then other similar signs must also be allowed under those same conditions. For example, if political signs are exempted from permit requirements, and allowed to be 32 s.f. in commercial districts and located in a city right of way for up to 45 days, then all non-commercial messages must be provided the same opportunity and regulated (or not regulated) in the same fashion. In reviewing Asheville's sign ordinance, there are a moderate number of "special purpose signs" that will require reconsideration. These include:

- Real estate signs
- Political signs
- Special event signs
- Community signs
- Commemorative signs
- Directional signs
- Construction signs
- Advertisements on city buses
- Noncommercial messages
- Automatic teller machines, gas pumps & vending machine signs
- Signs allowed in rights-of-way (i.e. places of worship)
- Subdivision & Multi-family development signs
- Real estate signs on multi-story buildings
- Home occupations
- Inflatable Balloon Signs (generally used for "Grand Openings")
- Business signs on vehicles

There are also a number of signs that are restricted to a certain user or place, and are also potentially problematic. These signs include:

- Theater or event marquee
- Changeable copy
- Corporate flags
- A-Frame signs
- Time/date/temp signs
- LED signs (marquee, time/date/temp, changeable copy)
- Non-residential uses in residential districts (churches, schools, libraries, etc.)

Lastly, there are a number of signs that fall outside of these two categories and will also require careful consideration include:

- Temporary signs
- Flags, of any nation/state/county, etc.
- Decorative flags (or other devices used to attract attention)
- Signs for tall buildings
- Designated historic and/or landmark signs
- Business signs on vehicles

While the court was unanimous in the judgment, it was somewhat fractured in their opinions. In analyzing those opinions and the level of concurrence that has occurred amongst the justices, it appears safe to conclude that municipalities may continue to make “content neutral” distinctions including those related to:

- Size
- Location, public v. private property
- Attached and free-standing
- Lighting
- Fixed message and electronic/changeable signs
- Commercial v. residential
- Restricting the total number of signs allowed per mile of roadway

What is less comfortable to conclude is whether or not a municipality may continue to regulate

- On-premise and off-premise signs, and/or
- Place time restrictions on signs for one-time events

With these things in mind, staff has identified two options for which we are seeking policy direction.

**Option #1.** Focus only on those special purpose signs and other problematic signs and amend the existing sign code to comply with the judicial decision – staff resources only, no outside consultant.

**Option #2.** Re-write the existing sign code to not only correct the non-compliance issues but also look to make other improvements that will 1) rebalance community interests & aesthetics with legitimate business identification needs, and 2) simplify the application & permitting process. This may involve the use of an outside consultant, funds for which have not been identified.

#### Recommendation

The existing sign ordinance was adopted in 1997 and has had relatively minor amendments to it over the last 15+ years. With the growing interest in more user friendly form code, combined with changing community values and technological advancements that calls to question the legitimate needs of certain types of signage, staff would recommend prioritizing this amendment and dedicate the necessary resources for a complete sign code re-write.

#### **Financial Impact/Resources:**

Significant staff resources and possible outside consulting. Staff is researching the availability of an off-the-shelf product that may be easily customized for Asheville. Costs are estimated to be between \$10K-50K.

**Goal Alignment:**

Significant changes are required to comply with the supreme court's decision; further work with the sign code could align with the Council's goal of Economic Growth and Sustainability by promoting operational efficiencies and sustainable community practices.